

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

UNITED STATES OF AMERICA

v.

MARK FORKNER (01)

Case No. 4:21-CR-00268-O

**POSITION OF MR. FORKNER ON (1) DISCLOSURES TO THE FAA AND
(2) CRASHES**

1.

At a bench conference on March 18, 2022, the Court inquired whether Boeing's disclosures to the FAA are still relevant. Mr. Forkner adopts his prior briefing and here notes three reasons they are relevant: (1) whether Ms. Klein knew about low speed; (2) whether low speed was material; and (3) whether it is plausible that Mr. Forkner could intend to hide low speed MCAS. Ms. Klein was personally invited to several meetings where low speed MCAS was discussed. See e.g. Def. Ex. 12A-C, 14A-D, 20A-C, 21A-C. In some cases, she was a "required" attendee by her boss. Similarly, disclosures to Ms. Klein's close colleagues at the FAA bear on these issues—especially because Ms. Klein worked so closely with them—often learning about issues that Mr. Forkner did not. See Def. Ex. 8 (she works closely), 13A-C, 16B-D, 19A-C (she is invited to disclosures). Widespread knowledge at the FAA 737Max team makes it less likely that Mr. Forkner could think he could hide MCAS from Ms. Klein. In addition, that MCAS was known to

Ms. Klein—or even to the FAA certification office—bear on materiality—if they knew about MCAS and did not require training for it.

2.

The Court inquired whether the crashes are still relevant. The government has submitted a proposed instruction to be given to the jury. Still, *brief* evidence about the crashes and their causes is relevant to the defense, for at least two reasons. First, after the first crash, Ms. Klein evaluated the causes of the crash and determined that simulator training on MCAS was not required. *See e.g.* Def. Ex. 187 (Ms. Klein discussing the causes of the crash on November 7, 2018). That evidence is relevant to materiality. Second, the crashes and their causes are also relevant to the credibility of witness David Loffing, as previously briefed. He was Chief Engineer of the 737MAX from 2014-2017, when MCAS was modified, and his team designed the plane to rely on a single, non-redundant AOA sensor based on assumptions about pilot reactions that were inaccurate. He was a subject of the investigation—we say up until he “remembered” a damaging conversation to Mr. Forkner for which there is no physical evidence. He and Boeing had a motive to curry favor because of the crashes and their causes.

Respectfully submitted,

/s/ Jeff Kearney

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CERTIFICATE OF CONFERENCE

The government has opposed admission of the disclosures and the crashes.

/s/ _____
JEFF KEARNEY

CERTIFICATE OF SERVICE

I hereby certify this Motion was electronically filed, and Assistant United States Cory Jacobs was electronically served via this Court's Electronic Filing System on the day of filing.

/s/ _____
JEFF KEARNEY